

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Gray Television Licensee, LLC)	MB Docket No. 18-8
)	
For Modification of the Television Market)	CSR-8949-A
for WYMT-TV, Hazard, Kentucky)	
Facility Identification Number 24915)	

OPPOSITION OF DIRECTV, LLC TO PETITION FOR SPECIAL RELIEF

Amanda E. Potter
Christopher Heimann
Gary L. Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street, NW
Washington, DC 20036

Its Attorneys

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DIRECTV, LLC (“DIRECTV”) hereby submits its opposition to the Petition for Special Relief (“Petition”) submitted by Gray Television Licensee, LLC (“Gray”) in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

DIRECTV has long been sympathetic to the concerns of “orphan counties” that lack access to in-state local broadcast stations. DIRECTV supported legislation extending the cable market modification regime to satellite, and it supported the Commission’s proposed rule changes to implement that legislation. Likewise, DIRECTV has worked cooperatively with local communities and broadcast stations, alike, to facilitate market modifications in numerous “orphan counties.” In the instant proceeding, however, Gray attempts to subvert the market modification process to serve its own economic interests. Specifically, under the guise of serving direct broadcast satellite (“DBS”) customers in eight Kentucky counties (the “Orphan Counties”), which currently lack access to in-state CBS broadcasts, Gray seeks to force DIRECTV to carry *two* CBS affiliates licensed to the Lexington, KY DMA—WYMT-TV (“WYMT”), based in Hazard, KY, as well as WKYT-TV (“WKYT”), based in Lexington, KY—both of which are owned by Gray.

Neither Congress nor the Commission intended the satellite market modification procedure to be used for such a purpose. As a threshold matter, Gray's proposed outcome should be deemed *per se* technically and economically infeasible. In the *Satellite Market Modification Order*, the Commission determined that DBS providers would not be required to reserve additional scarce spot beam capacity on a "neighboring" spot beam to effectuate market modifications for the benefit of only a small portion of the geographic area covered by that spot beam. But that is precisely the outcome Gray seeks here. Because DIRECTV does not presently carry WYMT in any market, Gray's request to add the Orphan Counties to WYMT's local market necessarily is infeasible. Moreover, DIRECTV lacks sufficient capacity on the Lexington, KY spot beam to launch WYMT and remain compliant with the Commission's rules. Separately, DIRECTV's forced carriage of WKYT *and* WYMT plainly conflicts with the "duplicating signals" exception to the carriage obligations of DBS providers, and therefore is unlawful.

DIRECTV nevertheless remains willing to work with Gray to identify a mutually agreeable solution that would deliver in-state CBS broadcasts to DIRECTV customers in the Orphan Counties identified in the Petition. Indeed, DIRECTV has the ability to extend coverage of WKYT to the Orphan Counties and is willing to do so. However, the instant Petition goes much further and should be denied.

ARGUMENT

To understand the true intent of Gray's Petition, one must consider the cumulative effect of the separate requests for relief contained therein. *First*, Gray asks the Commission to add the

Orphan Counties to WYMT’s local market.¹ *Second*, Gray asks the Commission to delete 23 Kentucky counties (the “23 Counties”) from the local market of WYMT.² At first glance, and in isolation, these requests seem well-intended and innocuous enough. Adding the Orphan Counties to WYMT’s market would enable DIRECTV customers in those communities to receive in-state CBS broadcasts. Meanwhile, deleting the 23 Counties from WYMT’s local market would not alter the station lineup DIRECTV currently offers in those communities, as DIRECTV presently carries only WKYT in the 23 Counties. The problem is that, taken together, the two requests would split the markets of WYMT and WKYT in such a way that would force DIRECTV to carry *both* WKYT and WYMT, namely by: (1) establishing carriage rights for WYMT in the Orphan Counties, and (2) eliminating DIRECTV’s statutory right to choose between “duplicating signals” in the 23 Counties, which would force DIRECTV to continue carrying WKYT in those communities.³ DIRECTV addresses the fatal legal defects of each of Gray’s requests, as well as a potential solution, below.

I. BECAUSE DIRECTV DOES NOT CURRENTLY CARRY WYMT, ADDING THE ORPHAN COUNTIES TO WYMT’S LOCAL MARKET SHOULD BE DEEMED *PER SE* TECHNICALLY AND ECONOMICALLY INFEASIBLE

When determining if a proposed market modification is technically or economically feasible, the *Satellite Market Modification Order* clearly states that feasibility is to be assessed

¹ See *Gray Television Licensee, LLC For Modification of the Television Market for WYMT-TV, Hazard, Kentucky, Facility Identification Number 24915*, Petition for Special Relief, at 1 & n.2 (filed Jan. 9, 2018) (“Petition”). The Orphan Counties are: Bell, Floyd, Harlan, Johnson, Leslie, Letcher, Martin, and Pike. *Id.*

² See *id.* at 1-2, 51-54 (seeking modification of WYMT’s satellite carriage market to exclude the 23 Counties). The 23 Counties are: Russell, Casey, Lincoln, Boyle, Garrard, Mercer, Jessamine, Madison, Estill, Anderson, Woodford, Fayette, Clark, Montgomery, Menifee, Franklin, Scott, Bourbon, Bath, Rowan, Harrison, Nicholas, and Fleming. See *id.* at 2 n.3.

³ A pictorial presentation of Gray’s Petition is provided in Exhibit A, attached hereto. Specifically, Exhibit A is a map of the areas that would be affected by Gray’s Petition—namely, the Lexington, KY DMA and the Orphan Counties. The orange-shaded areas are the 23 Counties, in which Gray’s Petition would force DIRECTV to continue to carry WKYT. The blue-striped areas are the remaining counties in the Lexington, KY DMA, in which DIRECTV would retain discretion, under the “duplicating signals” exception, to carry WKYT, WYMT, or both. The green-shaded areas are the Orphan Counties, in which Gray’s Petition would force DIRECTV to carry WYMT.

based on “the relevant spot beam on which th[e] station is *currently carried*.”⁴ The Commission took the further step of defining “relevant spot beam” as “the spot beam on which the station is currently carried.”⁵ Thus, because DIRECTV does not presently carry WYMT, there is (and can be) no “relevant spot beam” on which to assess the feasibility of expanding WYMT’s local market to the Orphan Counties and, consequently, such expansion necessarily is *per se* technically and economically infeasible.⁶

Even assuming, *arguendo*, that pre-existing carriage is not a necessary pre-condition for feasibility, DIRECTV’s carriage of WYMT in the Orphan Counties is *per se* infeasible under virtually any potential spot beam carriage scenario. In particular, the spot beams currently used to provide local broadcast service to the Orphan Counties are deemed “neighboring” spot beams for purposes of WYMT and, as such, the Commission already determined carriage on those spot beams is *per se* technically and economically infeasible.⁷ In particular, if DIRECTV were to carry WYMT on the spot beams that currently serve the Orphan Counties, it would be required to “reserve capacity on the entire ‘neighboring’ spot beam – capacity that could otherwise be used for a new station or a multicast signal carried throughout” the Orphan Counties’ respective

⁴ *Amendment to the Commission’s Rules Concerning Market Modification*, Report and Order, 30 FCC Rcd 10406 ¶ 30 (2015) (“*Satellite Market Modification Order*”) (emphasis added).

⁵ *Id.* ¶ 30 n.163.

⁶ To put it another way, pre-existing carriage operates as a condition precedent to any satellite market modification. Indeed, numerous statements in the *Satellite Market Modification Order* confirm that all parties—broadcasters, DBS providers, and the Commission, alike—understood that the satellite market modification procedure would not be used to require DBS providers to *launch* carriage of a broadcast station in the absence of an independent carriage obligation. *See, e.g., id.* ¶ 32. Rather, it was understood that the geographic reach of the “spot beam on which [a] station is currently carried” would be the *outer* limit of a DBS provider’s legal obligation in the market modification context. *Id.* Thus, the necessary implication of the Commission’s articulation of the feasibility analysis is that any market modification request that would have the effect of requiring a DBS provider to add a new signal to a local spot beam is deemed *per se* infeasible.

⁷ *See id.* ¶ 32. Notably, this carriage scenario appears to be Gray’s preferred outcome. *See* Petition at 55 (claiming that DIRECTV’s response to Gray’s pre-filing coordination letter, in which DIRECTV evaluated the feasibility of delivering WYMT to the Orphan Counties from the Lexington, KY DMA spot beam, “is a non-sequitur to WYMT-TV’s request” and explaining that “Gray seeks to obtain carriage rights [for WYMT] for the Orphan Counties, which are outside the Lexington DMA”).

DMAs.⁸ Meanwhile, WYMT “could only be received by subscribers in a small part” of the Orphan Counties’ DMAs.⁹ The Commission recognized that requiring a DBS provider to effectuate a market modification under such factual circumstances would be a tremendous waste of scarce spectral resources,¹⁰ and, in fact, did not even require DBS providers to evaluate the coverage and capacity of “neighboring” spot beams as part of the pre-filing coordination process.¹¹

That leaves only the Lexington, KY spot beam. But there, too, the *Satellite Market Modification Order* provides that such carriage should be deemed *per se* technically and economically infeasible. As discussed in greater detail below, Gray has no right to demand carriage for WYMT on DIRECTV’s system in the Lexington, KY DMA under the “duplicating signals” exception.¹² While the addition of the Orphan Counties to WYMT’s market would not establish such a right as to the *Lexington, KY DMA*,¹³ Gray’s Petition would create carriage

⁸ *Satellite Market Modification Order* ¶ 32 (internal quotation marks omitted).

⁹ *Id.*

¹⁰ *See id.* ¶ 32 n.180 (rejecting NAB’s proposal to require a DBS provider “‘to certify that the spot beam that does serve the affected communities does not have the capacity to carry the station unless another channel is deleted (or other technical or economic reason)’” (quoting Letter from Erin L. Dozier, NAB, to Marlene H. Dortch, FCC, MB Docket No. 15-71, at 3 (filed July 15, 2015))); *id.* ¶ 32 n.180 (“We find that the financial and opportunity costs associated with requiring a carrier to use scarce capacity on a second spot beam for a station that could only be received by subscribers in a small part of the local market served by such spot beam makes carriage on such spot beam *per se* infeasible.”).

¹¹ Indeed, a DBS provider’s obligation to evaluate feasibility is limited to the “relevant spot beam,” which, as explained above, is defined as the “spot beam on which the station is currently carried.” *See Satellite Market Modification Order* ¶ 47 & n.236 (“The carrier must state in its certification that the new community is covered by the relevant spot beam, but carriage is nevertheless infeasible and explain why.”); *id.* ¶ 30 n.163 (defining “relevant spot beam”). While WYMT has no “relevant spot beam” for purposes of DIRECTV’s network, the *Satellite Market Modification Order* otherwise makes clear that a DBS provider’s certification obligation would be limited to the spot beam serving the DMA in which the station at issue is assigned. *See, e.g., id.* ¶ 39 (explaining that a DBS provider must evaluate whether it can “provid[e] the station to the new community in the same manner that it currently uses to determine where in the relevant DMA it can provide the current local broadcast stations” (emphasis added)); ¶ 41 (explaining that a DBS provider’s feasibility certification “must explain why carriage is not technically and economically feasible, including a detailed explanation of the process by which a satellite carrier has determined whether or not the *spot beam in question* covers the geographic area at issue” (internal quotation marks omitted) (emphasis added)); *id.* ¶ 32 n.180 (rejecting NAB’s proposal).

¹² *See* Section II, *infra*.

¹³ *See* note 3, *supra*; *see also* Exhibit A.

rights for WYMT within the *Orphan Counties*.¹⁴ Such an outcome, yet again, would place DIRECTV in the position of being forced to devote scarce spot beam capacity on its Lexington, KY spot beam in order to comply with carriage obligations applicable to only a small sliver of out-of-market customers, and at the expense of non-duplicative programming that could be viewed throughout the Lexington, KY DMA.¹⁵ Indeed, if the Petition were granted, it would produce the absurd result of requiring DIRECTV to carry WYMT *only in the Orphan Counties*.¹⁶ Thus, even if the Commission had not already concluded that DBS providers should not be forced to use their spot beams in such an inefficient manner, which it plainly has,¹⁷ the particular factual circumstances present here confirm the wisdom of such a conclusion.

In any event, adding WYMT to the Lexington, KY spot beam is infeasible for the independent reason that DIRECTV currently lacks sufficient capacity to launch WYMT in accordance with the Commission's rules unless WKYT is deleted from the spot beam.¹⁸ Contrary to Gray's assertion, DIRECTV is under no obligation to "consider technical solutions to remedy its spot beam capacity problem;"¹⁹ the *Satellite Market Modification Order* provides

¹⁴ See 47 C.F.R. § 76.59(a); *Satellite Market Modification Order* ¶ 50 (concluding that the Commission "will not grant a market modification petition that could not create a new carriage obligation at the time due to a finding of technical or economic infeasibility").

¹⁵ See *Satellite Market Modification Order* ¶ 32.

¹⁶ In particular, Gray's proposed deletion of the 23 Counties from WYMT's market would have the effect of precluding DIRECTV's carriage of WYMT in those communities (*i.e.*, the orange-shaded portion of Exhibit A), thus forcing DIRECTV to carry WKYT in the 23 Counties. In the remaining portions of the Lexington, KY DMA—*i.e.*, the blue-striped portion of Exhibit A, which includes Hazard, KY, WYMT's community of license—WYMT would remain a "duplicating signal" and thus eligible for carriage only at DIRECTV's discretion. DIRECTV's carriage obligation vis-à-vis WYMT thus would be limited to the Orphan Counties (the green-shaded portion of Exhibit A). See note 3, *supra*; see also Exhibit A. In such circumstances, the Lexington, KY spot beam effectively would act as a "neighboring" spot beam, and forced carriage of WYMT therefore should be deemed *per se* technically and economically infeasible. See *Satellite Market Modification Order* ¶ 32 (using the term "neighboring spot beam" to refer to spot beams on which a modified station "could only be received by subscribers in a small part of the local market served by such spot beam").

¹⁷ See *Satellite Market Modification Order* ¶ 32.

¹⁸ See Petition at Exhibit FF. As DIRECTV explains in Section III, *infra*, DIRECTV is willing to provide access to WKYT to its customers throughout the Lexington, KY DMA and the Orphan Counties.

¹⁹ Petition at 55.

that a carrier is not required to show “that it cannot reconfigure a spot beam to effectuate carriage” in order to demonstrate infeasibility.²⁰ Nor can Gray’s speculative claims regarding the “possibility that spot beam capacity could become available at a future date” justify grant of the Petition.²¹ The Commission concluded that it “will not grant a market modification petition that could not create a new carriage obligation at that time due to a finding of technical or economic infeasibility.”²² Because the addition of WYMT to DIRECTV’s spot beams *today* is *per se* technically and economically infeasible, the Petition should be denied.²³

II. DELETING THE 23 COUNTIES WOULD ABROGATE DIRECTV’S STATUTORY RIGHT REGARDING CARRIAGE OF “DUPLICATING SIGNALS” AND IS THEREFORE UNLAWFUL

Even assuming, *arguendo*, that the addition of the Orphan Counties to WYMT’s local market were feasible, the proposed deletion of the 23 Counties to WYMT’s local market nevertheless fails on the independent ground that such deletion would impermissibly encroach upon the statutory rights of DIRECTV. Section 338 of the Communications Act of 1934, as amended (the “Act”), provides an exception to the must-carry/carry-one, carry-all obligations of DBS providers for “duplicating signals.”²⁴ “Duplicating signals” include, *inter alia*, broadcast stations that are located in the same state and in the same local market, and which are affiliated

²⁰ *Satellite Market Modification Order* ¶ 32. See also 47 U.S.C. § 338(l)(3)(A); 47 C.F.R. § 76.59(e) (stating that the technical and economic feasibility analysis is limited to the DBS provider’s “satellites in operation at the time of the [market modification] determination”); *Satellite Market Modification Order* ¶¶ 30, 50. Petition at 55.

²² *Satellite Market Modification Order* ¶ 50 (finding such conclusion to be “more consistent with the statute’s requirement that a market modification ‘shall not create additional carriage obligations for a satellite carrier’ if it is infeasible ‘at the time of the determination,’” and noting that “claims of infeasibility related to a carrier’s satellites are not likely to change for the life of a satellite” (quoting 47 U.S.C. § 338(l)(3)(A))).

²³ See *Satellite Market Modification Order* ¶ 50.

²⁴ 47 U.S.C. § 338(c)(1) (“[A] satellite carrier shall not be required to carry upon request ... the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.”). The Commission codified the statutory language, almost verbatim, in Section 76.66(h) of the Commission’s rules. 47 C.F.R. § 76.66(h)(1) (“Duplicating signals”).

with the same television network.²⁵ The Commission’s rules further provide that it is the satellite carrier that decides which duplicating signal/network affiliate to carry.²⁶ In the Lexington, KY DMA, the Gray-owned CBS affiliates—WKYT and WYMT —qualify as “duplicating signals.” Thus, consistent with the legal regime established by Congress and the Commission, DIRECTV currently retransmits only one of the CBS stations (WKYT) to customers in the DMA.

Gray nevertheless takes issue with DIRECTV’s decision to carry only one of the Lexington CBS stations²⁷—as well as, apparently, the satellite carriage regime applicable to “duplicating signals” *writ large*—and filed the Petition to manufacture carriage rights for WKYT that, as a “duplicating signal,” Congress and the Commission already determined it may not have. Specifically, Gray proposes to delete the 23 Counties from WYMT’s local market to bifurcate the Lexington, KY DMA into two separate markets in a manner that would force DIRECTV to carry WKYT in the 23 Counties. To be clear, the 23 Counties that Gray proposes to delete from WYMT’s market are not “orphan counties.” Nor does Gray argue that deleting the 23 Counties is necessary to promote, or otherwise serve, the localism interests of DIRECTV customers in those communities. On the contrary, DIRECTV customers in the 23 Counties already are served by in-state, in-market broadcast stations—including WKYT—and Gray clearly intends to maintain the status quo with respect to WKYT in the 23 Counties.²⁸ Thus, the only conceivable goal of deleting the 23 Counties from WYMT’s local market is to allow Gray to cement WKYT’s carriage rights in those communities and, in turn, strip DIRECTV of the

²⁵ 47 U.S.C. § 338(c)(1).

²⁶ 47 C.F.R. §§ 76.66(h)(2)-(3) (“A satellite carrier may select which duplicating signal [or network affiliate] in a market it shall carry.”).

²⁷ See Petition at 55 (“On its face, DIRECTV’s response appears to be an attempt to avoid carrying two CBS affiliates in the Lexington DMA”).

²⁸ See *id.* at 51-54 (arguing that the 23 Counties should be removed from WYMT’s market based, in substantial part, on the existing availability and carriage of WKYT in those communities).

rights (including, in no small part, the First Amendment right of editorial discretion) afforded to DBS providers in Section 338 to choose between the two CBS affiliates within the 23 Counties.²⁹

Significantly, the Petition fails even to acknowledge that the relief Gray seeks would, in effect, eliminate the application of the “duplicating signals” exception in the 23 Counties. Indeed, Gray does not assert, much less offer supporting legal evidence, that the satellite market modification procedure may be used to abrogate DIRECTV’s rights in this manner. Nor could it, as Congress was fully aware of the limitations placed on the carriage rights of duplicating signals when it amended the Act—Section 338, the very same provision that addresses “duplicating signals”—to permit satellite market modifications. Congress did not modify the rights of duplicating signals at that time, and thus left in place the regulatory regime that grants DBS providers, not broadcasters, the right to choose between duplicative local, in-state broadcast affiliates.³⁰ Accordingly, the rules of statutory construction require the Commission to avoid an interpretation of the satellite market modification procedure that would disturb the independent legal rights of DBS providers.³¹ To adopt a contrary interpretation would render Section 338(c)(1) a nullity.³²

The *Satellite Market Modification Order* acknowledges as much in response to similar arguments previously posited by Gray. In particular, Gray argued in the 2015 rulemaking proceeding that “the ‘substantial duplication’ exceptions to the satellite mandatory carriage rules

²⁹ 47 U.S.C. § 338(c)(1); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (stating that “[t]here can be no disagreement” that programming distributors “engage in and transmit speech ... by exercising editorial discretion over which stations or programs to include in its repertoire” (internal quotation marks omitted)).

³⁰ *See BedRoc v. United States*, 541 U.S. 176, 183 (2004) (“The preeminent canon of statutory interpretation requires us to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’” (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992))).

³¹ *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307-08 (1961) (“Where “[t]he statute admits a reasonable construction which gives effect to all of its provisions[,] ... we will not adopt a strained reading which renders one part a mere redundancy.”).

³² *See id.*

should not apply to stations in the communities that have been added to their markets via the market modification process.”³³ The Commission rightfully refused to take the bait, concluding that “Section 338(c)(1) speaks clearly on this point in permitting but not requiring a satellite carrier to carry more than one network affiliate licensed to the same state.”³⁴ In other words, a satellite market modification cannot be used to eliminate an exception to DBS providers’ carriage obligations. And if the Commission was unwilling to require DBS providers in the market modification context to carry “duplicating signals,” even when one such signal is a previously *out-of-market* station, there should be no question that a market modification cannot serve to limit a DBS provider’s discretion as to two local in-state affiliates of the same network that are, and always have been, licensed *in the same market*.³⁵

Gray’s bald assertion that DIRECTV is “attempt[ing] to avoid carrying two CBS affiliates in the Lexington DMA,” thus entirely misses the point.³⁶ The Act and the Commission’s rules *already* provide that it is up to DIRECTV to decide whether to carry WKYT or WYMT (or both) in the Lexington market. By the same token, and for the same reasons, the technical feasibility of deleting the 23 Counties from WYMT’s local market is wholly irrelevant.³⁷ Moreover, if the FCC granted both prongs of Gray’s Petition, DIRECTV not only

³³ *Satellite Market Modification Order* ¶ 28 n.146.

³⁴ *Id.*

³⁵ Significantly, the Commission’s discussion of the “duplicating signals” exception in the context of the satellite market modification procedure throughout the *Satellite Market Modification Order* implicitly, if not explicitly, acknowledges that market modifications may not be used to abrogate the discretion reserved to DBS providers in Section 338(c)(1). *See, e.g., Satellite Market Modification Order* ¶ 7 nn.22-24, ¶ 18 n.88, ¶ 35 n.193, ¶ 49 nn.242-43 (discussing the application of the “duplicating signals” exception). Petition at 55.

³⁶ In any event, Gray misstates the statutory satellite market modification factors governing its proposed deletion of the 23 Counties. For example, while Gray asserts that deleting the 23 Counties from WYMT’s market “*will have no impact* on consumers’ ability to view in-state programming” in support of the proposed deletion, the relevant statutory question is “whether modifying the local market of the television station would *promote* consumers’ access” to in-state broadcast stations. *Compare* Petition at 53 (emphasis added) with 47 U.S.C. § 338(l)(2)(B)(iii) (emphasis added). The applicable statutory factor thus weighs in favor of maintaining the status quo, as Gray’s proposed deletion of the 23 Counties would do nothing to further the ability of DIRECTV customers in those communities to access in-state CBS broadcasts.

would lose the right to choose which network affiliate to provide to its customers throughout the Lexington, KY DMA, but DIRECTV also would be forced to carry both stations, contrary to the statute and the “duplicating signals” exception. On these independent legal grounds, Gray’s Petition therefore should be rejected.

III. DIRECTV STANDS READY, WILLING, AND ABLE TO OFFER IN-STATE BROADCAST SERVICE TO THE ORPHAN COUNTIES IN A MANNER THAT PRESERVES ITS RIGHTS

As DIRECTV’s response to Gray’s pre-filing coordination letter explains, the spot beam currently serving the Lexington, KY DMA covers the Orphan Counties, as well.³⁸ DIRECTV therefore expressed its willingness to provide in-state CBS broadcasts to the Orphan Counties via WKYT, the CBS affiliate DIRECTV currently carries in the Lexington market.³⁹

Unfortunately, the instant Petition does not request that, but rather would force DIRECTV’s carriage of WKYT and WYMT and therefore, in its current form, should be denied. DIRECTV further urges the Commission to confirm that: (1) a market modification that seeks satellite carriage for a station that currently lacks any such carriage on the DBS provider’s network is *per se* technically and economically infeasible, and (2) the satellite market modification procedure may not be used to encroach upon DBS providers’ legal rights under the “duplicating signals” exception. The Commission also should make clear to Gray that any future

Likewise, the fact that other “Lexington-based stations ... focus their locally produced programming on the needs and interests of the Lexington DMA” does not support Gray’s bid to remove the 23 Counties from WYMT’s market. *See* Petition at 54. The relevant statutory factor is whether other stations “provide[] news coverage of issues of concern ... or coverage of sporting and other events of interest” to the relevant communities. 47 U.S.C. § 338(l)(2)(B)(iv). The fact that the 23 Counties already receive such coverage, again, merely supports maintaining the status quo, not the proposed market *modification*. Accordingly, the Commission can and should find that Gray’s Petition fails to satisfy the legal requirements to justify deleting the 23 Counties from WYMT’s local market. Moreover, the Petition’s request to delete the 23 Counties appears to lack the evidentiary showing required under the Commission’s rules and thus should fail for that additional reason. *See* 47 C.F.R. §§ 76.59(b)-(c); *Victory Television Network, Inc. For Modification of the Satellite Television Market of KVTJ-DT, Jonesboro, Arkansas*, Order, 32 FCC Rcd 2888 ¶¶ 4-5, 8 (MB 2017).

³⁸ *See* Petition at Exhibit FF.

³⁹ *See id.*

petition it chooses to file regarding its Lexington, KY CBS affiliates should be appropriately tailored in recognition of DIRECTV's statutory rights.

CONCLUSION

Consistent with the foregoing discussion, DIRECTV respectfully requests that the Commission deny the Petition.

Respectfully submitted,

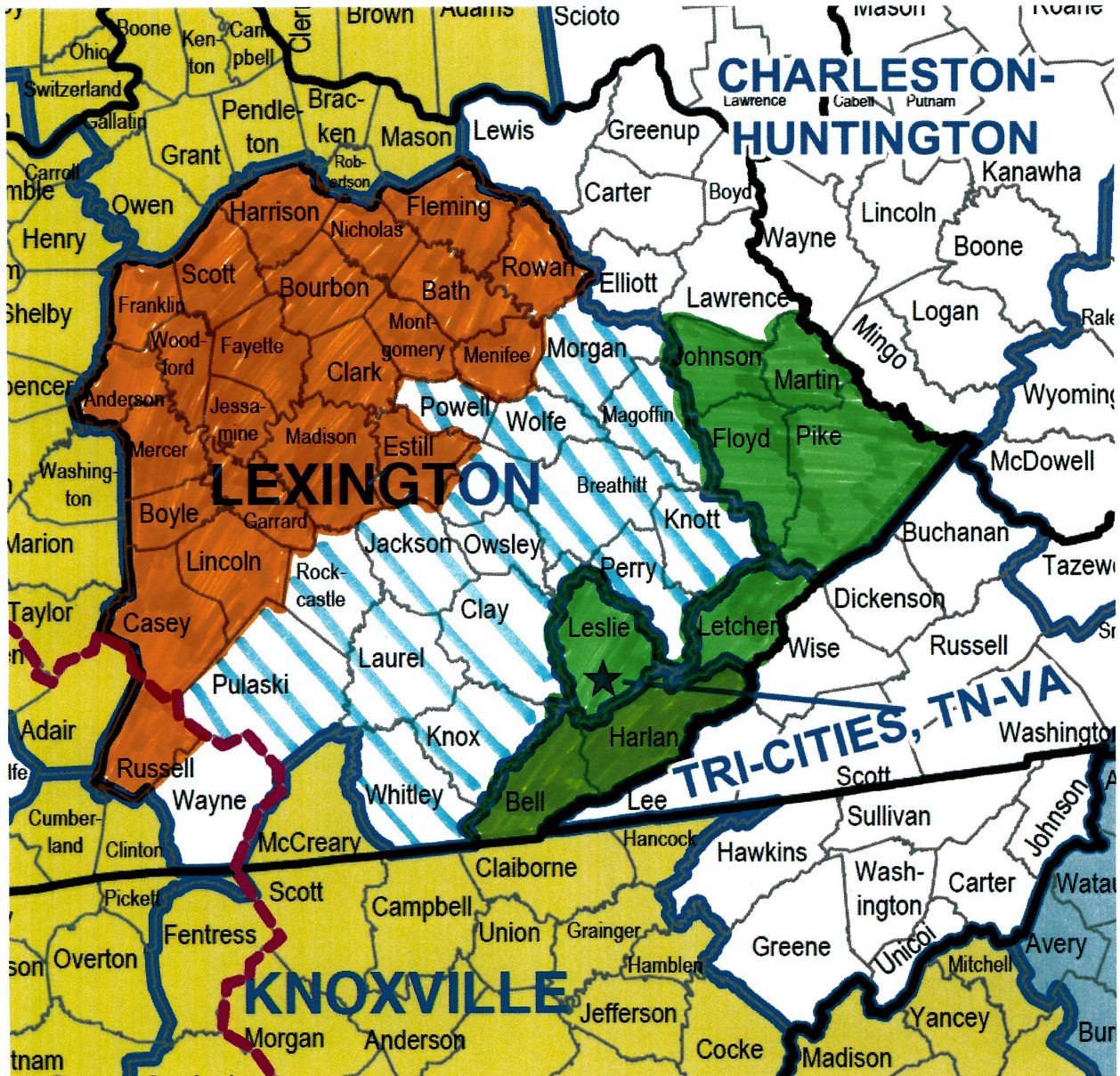
/s/ Amanda E. Potter

Amanda E. Potter
Christopher Heimann
Gary L. Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street, NW
Washington, DC 20036




Its Attorneys

February 5, 2018

EXHIBIT A
Nielsen DMA Map (2015-2016)



Source: <http://www.thevab.com/wp-content/uploads/2016/06/2015-2016-TV-DMA-map.pdf>

-  = 23 Counties
-  = Remaining Lexington, KY DMA Counties
-  = Orphan Counties

CERTIFICATE OF SERVICE

I, Loretia Hill, hereby certify that on this fifth day of February, 2018, a true and correct copy of the foregoing Opposition of DIRECTV, LLC to the Petition for Special Relief was served, via first-class mail, upon the following:

Robert J. Folliard, III
Gray Television Licensee, LLC
Assistant Secretary
4370 Peachtree Road, NE
Atlanta, GA 30319

/s/ Loretia Hill
Loretia Hill